

ADMINISTRATIVE DISCRETION ASSUMPTIONS IN DEVELOPING CUSTOMS LOGISTICS

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Abstract. *In recent years, increasing attention has been paid to the security of international flows, with a focus on a specific area of logistics, namely, customs logistics, understandably both as a new branch of science and as an integral, complex and multifaceted area of activity. Customs logistics includes the processes, functions and challenges of transportation, warehousing, forwarding, inventory management, management of flows/resources and other areas of activity, insofar as they are related to the legal acts implemented by customs, customs supervision, interaction between customs and business in developing secure international trade. This is an area of research and practice which is rapidly developing, is open to innovations and new ideas, is introducing smart technologies and is consolidating intellectual capital and which is closely linked to economics, management, law and other areas of research activity. The distinctive feature of logistics, including customs logistics, is the management of flows and resources in the international supply chain, regulation of logistic operations, functions and processes at the international, regional and national levels, wide geography of activities, increasingly complex interactions between entities of logistic activity, optimal use of resources, creation of added value using instruments of logistic activity, rational and effective risk management, ensuring of safety and security.*

The outcome of activity in customs logistics (the length of delivery of a consignment, safety and security, speedy and inexpensive completion of formalities, prompt and efficient performance of logistic operations) is determined not only by the logistic operations performed, but also, and sometimes primarily, by the nature of interaction between entities of this activity and controlling institutions (customs authorities, border guard, etc.), possibilities of cooperation and its consequences, the compatibility of information, computer and communications technologies, the efficient use of available information resources, the validity, objectivity and rationality of decisions and discretions. Changes in the activity of customs as the state institution implementing customs and international trade policy directly and significantly influence the security of the EU's economic area.

The article presents one of the possible concepts of customs logistics as a new area of logistic activity, discusses guidelines for customs and business cooperation and tendencies of the implementation of the discretionary powers granted to customs officials in enhancing the security of international trade.

Keywords: *security of international flows, customs logistics, administrative discretion, logistic activity, customs and business.*

JEL Classifications: *K19; K22; M16; P45 affects the security of the EU's economic area*

Introduction

Since ancient times, logistic activity has been significant in developing international economic relations and carrying out the activities of merchants and traders. In our time, logistics is considered to be crucial for the effective development of the economy and the management of international flows of goods and cargo. Thus, in recent decades business and other organisations have recognised logistics as one of the decisive factors in managing various flows to gain competitive advantage.

In scientific literature, various approaches to logistics are widely discussed, with a focus on the issues of business logistics, marketing logistics, and logistics of specific areas of activity or specific entities. The recent challenge of the science and practice of logistics is related to the logistic activity of public authorities in performing the functions assigned to them or profile functions. Along with the abandonment of over-rigorous business regulation and the rapid development of information technologies in Western democracies, a completely new social environment has emerged and the attitude towards the relationship between the State and business and the role of various non-profit organisations and interest communities has changed.

In line with the new philosophy, customs authorities are seeking to make the movement of goods simpler, faster, cheaper and safer. The aim pursued by the implementation of the Union Customs Code, Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 (Regulation (EU) No 952/2013), other European Union and national legal acts and the introduction of management and administrative innovations is to achieve a deeper and more effective integration of the supervision exercised by customs and other public authorities into the management of international flows. The integration processes have an impact on the performance of both public authorities and business entities. Our research looks at the trends of customs and business cooperation in developing customs logistics in the area of ensuring of the security of economic area through the effective exercise of the discretionary powers legally defined for customs authorities and officials.

The main tasks of this research are as follows: to reveal what logistic activities and changes in such activities are expected by international businesses from customs authorities and customs officials, what legally defined discretionary powers have been assigned to the authorities and the officials for the carrying out of these activities in order to meet the needs of business security and facilitation. The methods of systemic analysis and generalisation of legal acts, statistical data and other sources are employed with the aim of assessing the trends of the exercise of the discretionary powers in the areas of interest for the authors.

Logistic activity of public authorities in performing profile functions

The distinctive feature of our time is the partnership between the state and business in addressing the challenges of a country's economy. The new philosophy of public relations perceives socio-economic development as the "process and result of the rational activity" of entities (actors). Therefore, the parties to the relationship are in favour of

creating favourable assumptions for cooperation by developing partnership strategies, improving mutual trust and respect without compromising the underlying interests of the parties to the relationship, namely, the legally protected specific values of civil service and business and their hierarchy.

Philosophical thinking is changing the concept of “activity”. Algirdas Degutis, relying on the theory developed by Ludwig Mises and other researchers, describes an activity as a continued drive expressing dissatisfaction of an entity (actor) with the current situation and its (his) desire to replace it with a better situation. An action is always an effort “to replace a less desirable situation with a more desirable situation” (Degutis, Mises, 2014). From the point of view of the topic under consideration, this means that under the present-day conditions, business entities and public authorities and officials constantly face in their activities new challenges and the requirement to improve business conditions, while being aware of the trends of ensuring of public interest and improvement of the quality of public life.

It should be noted that the science of logistics is open and allows exploring objects of various nature. The basic idea of logistics is the management and transformations of the various flows that result in the interaction of objects of a single system (Grigorjev, 2017). On the other hand, targeted activities (e.g., research, drafting of strategic documents, implementation of different areas of activity) highlight the specific issues which define the clear outlines of logistic activity. Customs is an institution exercising continuous supervision and control of international trade flows. The increasingly intensive flows of goods and cargoes encourage cooperation between the state and business, international trade and logistics enterprises, customs authorities and other border control organisations in addressing the security of goods, cargo flows and the market and other issues of importance for businesses and the national economy. The researchers and experts examining customs issues point out that customs activity includes administrative and logistic activities. The Lithuanian researchers and experts D. Adomavičiūtė, J. J. Gurevičienė (2011, 2014)¹², R. Klevečka (2007), A. Raišutis (2005), J. Radžiukynas (2003, 2011), the foreign authors D. Widdowson (2007), L. de Wulf (2005), Jan-Erland Jansson (2009) and other researchers analysing the development tendencies of customs of the 21st century agree that, in addition to traditional functions of customs, such as collection of fiscal revenues and customs control, the functions of ensuring of security of the international trade chain and other functions assigned to customs need to be developed:

- collection of trade data for statistical and control purposes;
- effective border management by facilitating the movement of goods and services while maintaining the competitiveness of international business;
- implementation of requirements of the legal acts regulating the control of free movement and ensuring of national security.

Andrew Grainger (Nottingham University Business School), based on data of research into cooperation between entities of international trade and state institutions,

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- 1 Adomavičiūtė, D. Role of Customs Audit in the Trade Facilitation Process. Upraveniye v oblasti tamozhennogo dela. Minsk: Izdatelskiy centr BGU, 2014.
 - 2 Adomavičiūtė, D., Gurevičienė, J. J. Models of International Business Relations Analysis and Assessment Usable in Customs Activities. Business Systems and Economics, No. 1 (1), 2011.

also agrees that “the accounts given by the key informants suggest that the function of a customs manager is broad. When describing what they do, three interdependent areas of activity were highlighted: (1) logistics support; (2) supply chain management; and (3) regulatory compliance” (Grainger, 2016).

Changes in customs activity materialise through the application of innovative working methods, as a result of which customs, traditionally known as the ‘gate-keeper’, relies in its activities in the 21st century on the management of risk in the supply chain. Therefore, on International Customs Day Mr Kunio Mikuriya, Secretary General of the WCO, announced the WCO slogan ‘Digital Customs: Progressive Engagement’ (WCO, 2016), which was to be used during 2016. Moreover, the significance of ICT in customs activity was cited in a letter to Directors General in which the Secretary General referred to “enhanced detection of irregularities and illicit consignments through effective collection and analysis of data” (WCO, 2015). Risk management is based on the management of reliable data. These issues are discussed in the context of customs risk management by W. Czyżowicz and M. Rybaczyk. In analysing the databases of the Regional Intelligence Liaison Office (RILO) and the Customs Enforcement Network (CEN), which have operated for nearly 30 years, the researchers and experts note that “the exchange of intelligence at national, regional and international level must be improved in order to render enforcement action by Customs services more effective and to secure the optimum use of available resources” (Czyżowicz, Rybaczyk, 2017). Thus, given the challenges of the present day, particular attention is paid to new functions of customs, including the ensuring of the safety and security of flows through the application of risk management methods (COM/2014/527).

The impact of customs on logistics and changes in this activity reveal the essential characteristic features of the newly emerging and rapidly expanding phenomenon of customs logistics and distinguish (define) it as a specific area of logistics, international logistics.

The strategic approach in economics is oriented not only towards minimisation of costs or maximisation of profits in managing flows of goods, but also gaining of competitive advantage, optimisation of flow and resource management, and a number of other pragmatic goals (Gargasas, 2000). “Through a sound management of risk, customs is capable of determining where, when and how to conduct inspections and respond effectively to emerging threats” (Šemeta, 2014), while implementing legally regulated procedures – ensuring the security of flows – without interfering with or by minimally affecting less risky flows of goods, cargoes, consignments and other flows.

Customs has a legal status, therefore, in carrying out legally regulated administrative activities and assuming the obligations of ensuring of business security, it must apply uniform control standards to all economic operators, while safety and security must be ensured in such a way that official actions would present the smallest possible obstacle to legitimate business. Article 9(2) and (3) of the Law of the Republic of Lithuania on Public Administration stipulates as follows:

2. Supervision and control of the implementation of administrative acts shall be exercised only in compliance with the powers granted in accordance with the procedure

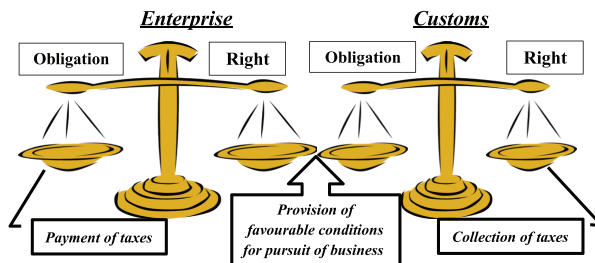
laid down by this Law to entities of public administration exercising the supervision and control, pursuant to this Law and other laws regulating the supervision and control as well as legal acts implementing them, requirements of legal acts of the European Union and international agreements of the Republic of Lithuania.

3. If an entity and form of supervision or control are not defined in laws and legal acts implementing them, legal acts of the European Union or international agreements of the Republic of Lithuania, an entity and form of supervision or control shall be defined by an entity of public administration that has passed an administrative act or any other entity of public administration authorised by and accountable to it (Law No XI-934 of 22 06 2010).

As is known, the customs supervision of the present day is regulated by the legal acts drawn up in accordance with the principles and the standards, as set out in the Kyoto Convention, which provide that customs control is to be limited to the means necessary to ensure compliance with the customs law, using risk management methods, audit-based and other legitimate means of examination ((Kyoto Convention, 1973). Council Regulation (EEC) No 2913/92 of 12 October 1992 which established the first Community Customs Code (EEC No 2913/92), clearly defines the customs authorities as the authorities responsible for applying customs rules. In present-day practices, the customs authorities of the EU Member States follow the Customs Code, other customs legislation, that is, a set of legal acts consisting of the following acts:

- a) the Customs Code and the provisions supplementing or implementing it, as adopted at Union level (Regulation (EU) No 952/2013);
- b) the Common Customs Tariff;
- c) the legal acts establishing a Union exemption scheme;
- d) the international agreements containing provisions related to the customs law to the extent that they apply in the EU;
- e) the national legal acts which are directly applicable (Law No XII-2694 amending Law No IX-2183) or are related to provisions of customs legislation;
- f) the administrative acts adopted by the director general of the Customs Department or by the entities of public administration authorised by him.

The administrative and legal supervision of customs is a specific case of the special supervision applicable to flows and other objects of logistic activity. These are administrative measures normally employed by customs authorities in order to ensure compliance with customs legislation and, where appropriate, with other provisions applicable to the goods in respect of which such action is taken (Regulation (EU) No 952/2013). In short, the administrative activities of customs are aimed at maintaining a balance between the rights and duties of customs and business (Mažeikienė, 2012) (see Graph 1).



Graph 1. Balance of rights and obligations of customs and business

Source: Pagal Mažeikienė. *Muitų teisė praktikams*, November 2012, No. 1, p. 3

Apart from control, another aspect of activity being of no less importance is ensuring of the safety and security of flows in line with the “powers conferred by the law”, while adjusting state and business interests. In our opinion, this is based on the concept of customs logistics. The material flow in the management of the international supply chain is one of the main concepts of logistics and the dominant object of logistic activity, since the key transformations taking place in the logistic activity are directed towards the flow. Customs is the main institution whose aim is to create favourable conditions for the development of business, namely, foreign trade, to create favourable conditions for trusting reliable foreign traders and to ensure the safety and security of the relevant objects, to simplify and speed up the legally regulated customs formalities. At the same time, customs is particularly responsible for the economic protection of national borders. Customs logistics is oriented towards reconciliation of the interests of the state and business in order to improve the effectiveness of international trade procedures and operations – optimisation of flow transformations. Customs is increasingly shifting its focus from the physical control of flows of imported cargoes to their verification, i.e., on the issue of specific authorisations, the controls based on audit, risk management and other innovative methods allowing for optimisation of flow control with the least possible impact on the intensity of the flows.

Thus, customs logistics is described as a specific area of logistics in which the objects of logistic activity are or may be subject to customs supervision. The specificity of customs logistics as an area of logistics is manifested by the special logistics-specific transformations of the objects of logistic activity that take place at the time of the customs supervision of such objects, participation of special entities of logistic activity (customs, border authorities and other institutions performing supervision, customs brokers, customs warehouses, customs carriers, etc.) in the logistic activity attributed to customs logistics, as well as specific interaction of these entities affecting the logistic activity and its outcome (partnership of the public and private sectors, international networking, etc.).

Discretionary rights of customs officials and trends of customs logistics Targeted development of discretion aiming at greater security of international business

Along with the abandonment of over-rigorous business regulation and the rapid development of information technologies in Western democracies, a completely new socio-economic environment has emerged and the attitude towards the relationship between the state and business and the role of various non-profit organisations and interest communities has changed. Presently, “the main purpose of state institutions and the civil servants working in these institutions is to help citizens to live well and to exercise their rights and freedoms” (Pranevičienė, Urmonas, 2008). One of the key features of the EU is the determination to develop well-being through a joint effort by implementing the idea of free movement (free movement of goods, services, capital and persons) as a value of the new form of communal living. In line with the new philosophy, customs authorities seek to make the movement of goods easier, faster, cheaper and safer. “Apart from its task of revenue collection, customs has to demonstrate its ability to manage and control external borders effectively and efficiently, in the interest of both the wider population and, of course, trade operators” (Kovacs, 2008). A major breakthrough should lie in the reform of the organisational structure of customs, “in which managerial effectiveness is recognised as a key factor in delivering effective business results, and in which a significant investment is made in developing the skills and abilities of managers and staff at all levels” (Customs Blueprint, 2008). The importance of enhanced and more effective integration of the supervision exercised by the custom authorities and other state institutions into the management of international flows has been highlighted. This has led to a change in the approach towards the performance of the professional functions of the customs authorities and officials. The Customs Blueprints: pathways to modern customs contain the following provisions:

- give the customs administration the authority to take decisions on customs administrative matters;
- provide effective powers for customs officers to administer and enforce customs legislation in line with international best practice and standards (Customs Blueprint, 2008).

Thus, the Blueprints promote the taking over of best practices through a more flexible legal regulation of customs activities driven towards the challenges of our time. In our opinion and also according to other researchers (for example, B. Pranevičienė (2008), A. Urmonas (2008), S. Katuoka (2017), etc.), these provisions are of particular importance in changing the attitude towards recognition of the professionalism of customs authorities and other state institutions and officials (civil servants) by improving confidence in their competence. In Lithuania, just as in other Western countries, it is possible to observe the development of the powers of officials, which allows “for a fairly loose choice between options of the implementation of the law, because the adopted laws are declarative”. Pursuant to Article 8 of the Law on Customs, as regards the performance by customs officials of their duties based on the right of discretion, in addition to the

general principles indicated in Article 3 of the Law of the Republic of Lithuania on Public Administration (New version, 2017), the following specific principles are of major importance:

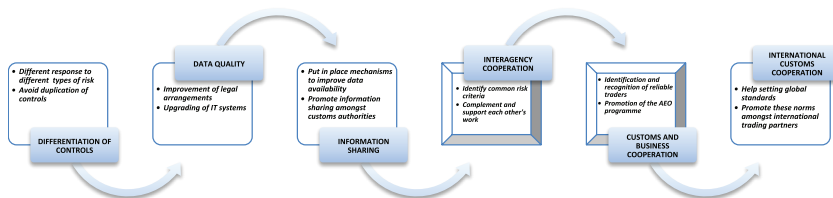
- professionalism and personal initiative,
- responsibility and official discipline,
- adjustment of single-person and collegial decision-making (New version Law No XII-2694).

In other words, assumptions are provided for broadening the limits of the legislative discretion of administrations, which, in turn, means that standards and requirements are set for institutions and officials, based on best practices, expert opinions, etc., that must be complied with in the process of performance of constantly changing and expanding official duties. These legal acts are often formulated not very specifically or are declarative; therefore public administrations are likely to fill the emerging procedural and material gaps by taking action within the limits defined for them by the law. Such a freedom of action means the administrative discretion of an institution (Pranevičienė, Urmonas, 2008).

Challenges and trends of customs logistic activity

As already mentioned, risk management in the area of customs and ensuring of a secure international supply chain is a new function of customs in the 21st century, which has changed the relationship between customs as a public authority with entities of international trade. Risk management is a multidimensional approach aimed at developing customs logistics and covering legal, procedural, IT and other aspects. The most recent 2014 Communication from the Commission – a strategic document – on the EU Strategy and Action Plan for customs risk management (hereinafter the ‘Strategy’) sets out the outlines for risk management in the international supply chain and defines prospects for the development of customs logistics (COM (2014) 527). This is the key strategic document for enhancing supply chain security. It identifies the relevant risk mitigation and control measures that need to be employed at the most appropriate times and in the most appropriate part of the supply chain. It also highlights the international context of risk and the importance of international cooperation in risk management. In addition, the Strategy draws attention to the importance of facilitating and accelerating trade in the EU, enhancing the role of economic operators and the necessity to avoid undue disruption of logistics and supply chain processes through unconstructive and legally unjustified customs procedures and operations (COM/2014/0527). Strategic documents provide the principal guidelines for risk management in the area of customs, which are to be considered as a methodological basis for analysing customs modernisation trends and assessing cooperation between customs authorities and entities of international trade (see Graph 2).

***Source:** Based on Communication from Commission COM(2014) 527;
Press release of 21 August 2014 “Customs: Commission adopts strategy and
action plan for better customs risk management”*



Graph 2. Guidelines for risk management in the supply chain

It should be noted that the Customs Department under the Ministry of Finance of the Republic of Lithuania (hereinafter the 'Customs Department') aims at implementing strategic provisions by using the legally defined powers of legislative discretion of the administration. For example, commissions and working groups have been set up by orders of the Director General of the Customs Department with a view to implementing the specific objectives of the Strategy, such as:

- Customs authorisation design group: Order No 1B-115 of the Director General of the Customs Department of 2 February 2017.
- Working group on the implementation of reduction of administrative burden at the Lithuanian Customs: Order No 1B-76 of the Director General of the Customs Department of 24 January 2017.
- Working group on the creation of a united consulting and information network at the Lithuanian Customs for clients of the Lithuanian Customs: Order No 1B-55 of the Director General of the Customs Department of 20 January 2017, etc.

The 2016 Report from the Commission to the Council and the European Parliament COM(2016) 476 (2016) presents a general qualitative assessment of the implementation of the Strategy. According to the Report, the reform of customs risk management being in line with the current situation has enhanced the volume, speed and resources of international trade. A large number of actions have been launched. It is noted that progress has been uneven. The emerging insufficient financing to develop the required IT systems is one of the major issues. In addition, a topical issue is increased cooperation between customs and other authorities, as it is stated that progress in this area has been too slow.

It should be noted that special empirical research on customs logistics, such as the implementation of the Strategy, has not been undertaken yet either at EU level or in Lithuania. One of the reasons is the fact that, although in practice and in scientific literature this term is being used increasingly widely, it has so far not been clearly and unambiguously defined as a subject of scientific research. Therefore, the analysis of the interaction between law and logistics in the activities of the customs authorities and officials is most often based on the method of standardised systemic monitoring in order to assess the practical implementation of EU and national legal and strategic documents and trends in the development of specific customs activities in the short and long term. This method is often used in the preparation of reports of EU and national customs authorities, thus these annual performance analysis documents can serve as a significant source of scientific research on customs logistics.

The Lithuanian Customs periodically conducts general surveys concerning customs and business cooperation, in which a part of the issues deal with customs logistics. For example, the purpose of the surveys conducted in 2008 and 2012 was to identify the needs of economic entities related to the services provided by the Lithuanian Customs; on the basis of the collected information, to improve the provision of electronic services (while respecting the interests of business entities). A survey conducted by TNS Gallup during April-May 2008 involved 1,004 enterprises. A survey conducted by the Customs Department during February-March 2012 involved 140 enterprises. The surveys focused mainly on the management of information flows in the supply chain. An analysis of the data of the both surveys suggests that entities of international trade evaluate customs and business cooperation in managing the international supply chain only as mediocre (Banelis, 2013). Another no less significant indicator is the absence of major progress in the development of cooperation over the four-year period under consideration. The average score of both surveys on a 10-point scale remains approximately 7.4 points.

Much attention to the issues of customs logistics is devoted by students of the Master's degree study programmes *International Trade* and *Logistics Management* at Mykolas Romeris University in their theses. Notably, their pilot studies (interviews of 20 to 50 international trade and logistics enterprises) allow for claiming that in the supervision process undertaken by customs authorities, business entities are not able to identify the logistic activities of customs, that is, to distinguish the specific logistic services provided by the customs authorities from the functions of public administration performed by legal means. In other words, customs is increasingly often perceived as the 'gate-keeper', rather than as a partner in ensuring the safety and security of the supply chain, goods and cargoes in the process of the management of flows of goods, cargoes, consignments and other flows.

Conclusions

1. The distinguishing feature of the customs of the 21st century is cooperation between customs, which represents the interests of the state, and the entities of international trade with a view to achieving a common goal, namely, optimisation of the management of flows and resources in the international supply chain, along with ensuring security in international trade logistics.
2. Cooperation is based on the criteria of rationality: the process of joint activities is oriented towards achievement of clearly defined socio-economic results; the key principles of the partnership model include the flexibility of legal relations between customs and entities of international trade, which allows customs authorities to provide specific logistic services and businesses – to develop and manage their flows in a socially responsible manner.
3. Pragmatic objectives lead to development of the legal regulation of activities of customs authorities and officials. The development of discretionary rights and the development of customs logistics are mutually interlinked processes, therefore, the challenge faced by researchers and practitioners is, while respecting the interests of entities

of international trade, to expand and to improve customs logistics, and as regards the administrations of public administration institutions and officials holding the powers of legislative discretion – to develop the right of official discretion providing assumptions for the performance of the functions of customs logistics which are relevant to business – to facilitate business conditions for international trade, to enhance the security of international flows, along with the security of the EU's economic area.

4. The analysis of the topic has revealed that the vagueness of customs logistics as a new area of logistics is one of the obstacles to the development of cooperation between customs administrations and entities of international trade as well as entities of logistics.

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